

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77-6060

To be argued by
ALAN SHARETT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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DAVID STEVENS, DAVID STEVENS and
VIRGINIA STEVENS, on behalf of their
minor children,

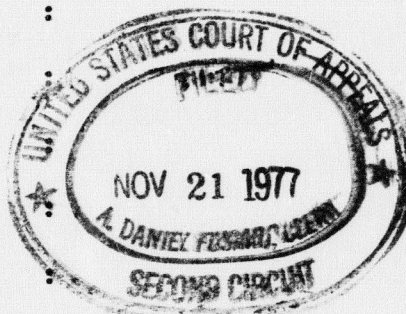
Plaintiffs-Appellees,
-against-

STEPHEN BERGER, individually and as
Commissioner of New York State
Department of Social Services,

Defendant-Appellant,
-and-

JAMES E. KIRBY, individually and as
Commissioner of SUFFOLK COUNTY
DEPARTMENT OF SOCIAL SERVICES; JOSEPH
CALIFANO, as the Secretary of the
DEPARTMENT OF HEALTH, EDUCATION AND
WELFARE,

Defendants.
-----X



B P/S

BRIEF FOR APPELLANT BERGER

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Plaintiffs-Appellees,	:
-against-	:
STEPHEN BERGER, individually and as	:
Commissioner of New York State	:
Department of Social Services,	:
Defendant-Appellant,	:
-and-	:
JAMES E. KIRBY, individually and as	:
Commissioner of SUFFOLK COUNTY	:
DEPARTMENT OF SOCIAL SERVICES; JOSEPH	:
CALIFANO, as the Secretary of the	:
DEPARTMENT OF HEALTH, EDUCATION AND	:
WELFARE,	:
Defendants.	:
	:
	:-----X

BRIEF FOR APPELLANT BERGER

Questions Presented

1. Whether the Federal Social Security Act § 402(A) which provides that as a condition for eligibility for public assistance each prospective recipient must submit his or her social security account number places a burden on the First Amendments' Free

Exercise of Religion Clause by requiring social security numbers for all those receiving aid?

2. Even assuming arguendo that requiring social security numbers implicates the First Amendment, is the provision necessitated by a compelling State interest incidental and neutral in its administration with no equally viable alternative available?

3. In view of the overwhelming evidence of prior fraud committed by plaintiffs, the political and economic philosophies involved, and the lack of belief by others of the religion in the "evil" of the social security number, did the District Court err in its judgment that plaintiffs' refusal to acquire social security numbers was based on a religious conviction that social security numbers were "evil"?

Statement of the Case

This is an appeal from an order and judgment of the United States District Court for the Eastern District of New York (Weinstein, J.), entered on May 4, 1977, [reported at 428 F. Supp. 899] enjoining and restraining the defendants from denying to plaintiffs David and Virginia Stevens and to their minor children, public assistance benefits for which they otherwise qualify, solely because they refuse, for alleged religious reasons, to obtain social security numbers for their children.*

Appellees Virginia Stevens and David Stevens brought suit in the Eastern District on August 31, 1977 on behalf of themselves and their four minor children (JA 5)**, pursuant to the Civil Rights Laws 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3) for a declaratory judgment and to enjoin federal and state officials from denying public assistance benefits to their children by reason of their refusal to obtain social security account numbers for them. Appellees claimed that their

* Pursuant to order of this Court dated October 19, 1977, this appeal was restored to the docket and ordered heard upon an accelerated briefing schedule.

** JA refers to Joint Appendix.

public assistance through the home relief program was terminated in violation of their First Amendment right to free exercise of religion (JA 5). They alleged they are "Messianic Jews" affiliated with the Saint John's Lutheran Church in Hicksville and assert that the N.Y.S. Social Services Law § 134-a(2) and the regulations promulgated thereunder, 18 N.Y.C.R.R. 351.2C and the Social Security Act, § 402(a)(25), 42 U.S.C. § 602(a)(25), both of which require that as a condition for eligibility under the Aid to Families with Dependent Children program (hereinafter referred to as AFDC),* each prospective re-

* The AFDC program was enacted as part of the original Social Security Act of 1935, 49 Stat 627 (1933) which created three "categorical assistance" programs -- old-age assistance, aid to the blind, and aid to dependent children. The program was designed to offer federal financial assistance to the States to support their efforts to provide welfare relief for needy children and certain of their relatives. 42 U.S.C. section 601. 49 Stat. 627 (1935). See King v. Smith, 392 U.S. 309 (1968).

Participation in the AFDC program is optional with the states. In order to take part in the program, a state must submit to the Secretary of Health, Education, and Welfare a plan which meets all requirements of the Act set forth in 42 U.S.C. section 602(a) and implementing federal regulations and policies. 42 U.S.C. section 602(b); 45 C.F.R. § 201.2. These state plan requirements are congressional directives which mandate what the basic eligibility criteria are to be, including what needs, income and resources of the recipient are to be taken into consideration. Requirements likewise mandate that certain administrative methods be utilized to assure the effective and efficient administration of the

Footnote continued

program. If the plan meets all of the applicable federal requirements, the Secretary must approve it. 42 U.S.C. section 602(b). The state then becomes eligible to receive substantial federal contributions for expenditures which it makes under its plan in accordance with federal requirements. 42 U.S.C. section 603; 45 C.F.R. § 201.3. New York State as opted to participate in the program and has complied with all of the requirements of 42 U.S.C. § 602(b) and 45 CFR § 201.2.

In 1974, Congress passed Public Law 93-647, which, inter alia, amended the Act by adding Section 402(a)(25) (42 U.S.C. section 602(a)(25)) to the state plan requirements for the AFDC program. The amendment requires that AFDC recipients furnish their social security account numbers to the state AFDC agency which is statutorily directed to use such numbers in the state's administration of its AFDC program.

On May 2, 1975, the Secretary published in the Federal Register a notice of proposed rulemaking implementing certain provisions of P.L. 93-647. 40 F.R. 19207. The notice set out proposals which, inter alia, added Part 232 including section 232.10 to the regulations. The Notice of Proposed Rulemaking solicited comments from interested persons. Thereafter, a total of 156 responses from public welfare agencies, District Attorneys, private citizens, advocate groups, a Governor, and state Attorney General were received. The Department received 85 identical letters from private citizens objecting to the furnishing of social security account numbers. Since the furnishing of these numbers is required by law, the Department obviously felt it could not delete this requirement unless the legislation upon which the regulation is based was amended.

On June 26, 1975, the Secretary published in the Federal Register, as final regulations, the new Part 232, including 232.10, effective July 1, 1975. 40 F.R. 27154.

cipient must submit his or her social security account number violated their religious beliefs. 42 U.S.C.

§ 602(a)(25) reads:

"(A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan. . ."

Appellees received an administrative fair hearing before the Department of Social Services in Suffolk County on May 5, 1976 at which time they were afforded the opportunity to testify. The decision of the hearing (Defendants' Exhibit G) was to discontinue the children's relief grant, because Mr. and Mrs. Stevens refused to supply social security account numbers for their four children. In August, the Commissioner of the New York State Department of Social Services, affirmed the county's decision to terminate relief for the Stevens' family. It was determined that the State's interest in obtaining the social security account numbers of all of its welfare recipients outweighed any claim of inter-

ference with religion which appellees may have had.

On November 9, 1976, the District Court granted an order for a preliminary injunction, restoring plaintiffs to the relief rolls. They were permitted to file an amended complaint naming the Department of Health, Education and Welfare as an additional defendant, since each member of a family receiving monies under national welfare programs must also supply a social security number as identification. A trial on the merits was held before Judge Jack B. Weinstein December 9, 1976 in the United States District Court for the Eastern District of New York.

Mrs. Virginia Stevens, plaintiff-appellee, testified that she had been receiving public assistance on and off since 1969, receiving both Federal Aid to Dependent Children and State Home Relief (JA 75).

In March of 1976, the Suffolk County Department of Social Services requested in compliance with State and Federal regulations which required social security numbers of all recipients, that she supply the social security numbers of her four children. Her children at that time did not possess social security numbers (JA 76). Although plaintiff herself and her husband had social security

numbers, plaintiff objected to obtaining them for her children, claiming religious grounds (JA 76). Mrs. Stevens explained that the "Anti-Christ Beast" as described in the Chapter of Revelations in the Bible will come to earth and have a system of numbers by which he will rule (JA 79). Mrs. Stevens objected to social security numbers for she feared her children, if numbered in this way, might be barred from Heaven. She stated that the number itself was not evil but its uses were (JA 93). Submitted into evidence as plaintiff's Exhibit III, is a pamphlet entitled "Speak Up Now Against New Controls Over Your Money and Your Life," by the Gospel Tract Society (JA 251). Mrs. Stevens testified that this pamphlet represented the fears that she had for her children in regard to social security numbers (JA 82). The pamphlet claims that the Rockefellers and others want to place the United States under a one-world government with an international monetary system to replace the American dollar. The pamphlet claims that area codes and zip codes as well as social security numbers are setting the stage for a common prefix to be used in a numbering system. The pamphlet objects to the increased use of credit cards and computers. The pamphlet talks of the social security number having the power to subjugate the American people and destroy democracy as we know it.

Some of the dangers caused by having social security numbers, according to the pamphlet, is that our taxes, and/or debts will be taken from our salary without our knowledge or consent and the government will know how much we are spending and for what purpose we are spending. Finally, it counsels people to inform their neighbors of this system so as to save our national freedom. The main thrust of the pamphlet is political and economic in nature, rather than rooted in religion. Mrs. Stevens further elaborated, stating that she did not object to other numbers such as telephone, zip code and license numbers (JA 102) but did object to social security numbers because of that use and power. Mrs. Stevens claimed that a social security number is needed to cash checks, obtain bank accounts and to secure work (JA 88-89). She admitted that the social security number could have some good uses, namely that she could obtain monetary assistance from the government by giving her social security number (JA 98). Mrs. Stevens further admitted on cross-examination that she did not really know for what purpose the Department of Social Services uses the social security numbers (JA 113). However, she still objects to giving the Department the children's social security numbers, for she claims they are a means of

identification. Appellee, Mrs. Stevens, however, did not object to the use of addresses as a means of identification since one could have ten different houses and the address is just another means of identifying one house from another (JA 110).

Appellees offered Pastor Jack Hickman, the Pastor of St. John's Lutheran Church in North Massapequa, New York which appellees attend, as a witness. He testified that it was not a theological tenet of his religion that people should not have social security numbers and that the religion did not contain any scripture, writing or book which forbids social security numbers, nor does his church teach that it is objectionable to be identified by a number (JA 138). In fact, the Pastor stated that he thought that most, if not all, of his parishioners had social security numbers (JA 136). The Pastor further testified that he did not believe as the Stevens said they did that the "Anti-Christ Beast" was represented by social security numbers (JA 132). In his interpretation of the Bible, the "Anti-Christ Beast" represents governmental authority and control (JA 132-133). The reason he chose to reject his social security number was to avoid legalistic requirements of the government and not because of any religious reasons (JA 130-131).

Dr. Willis E. Elliott, who holds a PhD. in scripture and a PhD. in theology of scripture testified for appellees as an expert on the history of the Bible. He described the Bible as a political book and described the "Anti-Christ Beast" as representing the evil of the persecution of the Christians (JA 151) as derived from the evil of the persecution of the Jews (JA 150). He further testified that a Christian's so called aversion to numbers is derived from the Bible, where David counted his troops and thereafter relied on his troops instead of God and was punished by God (JA 168). The "Anti-Christ Beast," Dr. Elliott explained, represents any government who takes away one's rights (JA 170). He stated that there exist cases where there is pragmatic use of the Bible for illegal advantage, since the Bible has enough authority to give people justification for any of their views. He further testified that if one believed that social security numbers were evil, it would follow that accepting the grant of aid would be evil (JA 180) and that the acceptance of checks with numbers on them would also be evil (JA 180).

David Stevens* testified that at one time he

* The plaintiff failed to call the plaintiff Mr. Stevens as a witness. The defendants therefore called Mr. Stevens.

had left home and was working for New York State (JA 183). He further admitted failing to report his income tax refund as income (JA 185) and recalled receiving a fair hearing on that charge resulting in termination of his assistance (JA 186). Subsequently, Mr. Stevens received \$79.00 per week in unemployment insurance. During that time, Mr. Stevens admitted to working, as a clammer in October and November, but claimed that he complied with the requirement of reporting his work to the employment insurance division of the Department of Labor. However, when shown his work report sheet (see Defendants' Exhibit "E") for all of October and part of November, Mr. Stevens admitted that he had noted in his unemployment book that he was not working when in fact he was working (JA 188-189). Social security numbers would have reduced the chance of this occurring.

Appellee Mr. Stevens objected to social security numbers per se, because he felt it is the most powerful number used in our system today (JA 191). In explaining the power, Mr. Stevens stated that he objected to the numbers being used for identification and being on a license. Mr. Stevens also objected to his children obtaining social security numbers because it would remain with them throughout life (JA 195). When asked how these

objections related to his religious claims, Mr. Stevens stated that he guessed it was through Revelation and whatever was in the Scripture (JA 195). He connected social security numbers to the "Anti-Christ Beast" because social security was the most powerful number. He objected to the fact that the numbers were necessary to get public assistance and the system was computerized (JA 196). He further stated that he would object to any number being given to his children which was in a computerized system (JA 197). Mr. Stevens, however, did not object to addresses or zip codes because he could avoid this method of identification by moving (JA 197); moreover, he stated that they are not as complex as social security numbers (JA 199). Although Mr. Stevens thought the system and number to be wrong, he did not think it wrong to obtain benefits by giving the number (JA 202). Finally, he admitted that although he fears governmental control and feels that the benefits represent control, he does not reject the benefits (JA 203-204).

On cross-examination of Mr. Stevens, the Assistant United States Attorney for the Eastern District informed the court that social security numbers do not appear on a New York State driver's

license (JA 206). Mr. Stevens further testified on cross-examination that he would object to any number that identified his children uniquely (JA 206). However, he did not object to his public assistance case number even when told it identified him and his family and distinguishes them from anyone else (JA 208).

Assistant Commissioner William Kaufman, who is in charge of Field Operations for the New York State Department of Social Services, testified for appellant that the approximate number of persons presently receiving public assistance in New York State are 1,400,000, and that only four of these persons, the Stevens' children, have refused to obtain social security numbers as a basis for relief (JA 241). Commissioner Kaufman in addition stated that the number of persons receiving assistance in New York State is very large compared to other States, and that assistance has tripled in the last decade. He further stated that Suffolk County, where the Stevens' family obtained relief, in particular has a very large caseload (JA 233).

Commissioner Kaufman advised the court that the public assistance program splits into either federally funded programs or solely State funded programs, the State system being dependent upon the Federal program

for the regulations basic law, and administration (JA 234). He explained that the system is a needs based system, that is when one applies for assistance the Department must first determine whether or not according to the standard of need set by the State Legislature, the person has insufficient resources as income. Moreover, after a person is declared needy, there are a variety of eligibility requirements, such as whether the applicant is employable, to be determined. Once a person is found to be eligible, the Department must determine the category, federal or state, for which the person is eligible.

Because of fiscal restraints which the State faces, those who are eligible for the federal category of assistance will be so placed (JA 221). The same application is used for all those who seek public assistance, regardless of whether they later become eligible for federal or state categories. This application requests the social security number of each applicant. When one completes the application, the Department then determines if the person or persons are needy, whether they meet the eligibility requirements and which is the appropriate category (JA 220). Mr. Kaufman also testified that federal law requires the

social security number of each recipient and/or applicant of the federally sponsored programs (JA 221). If the State does not provide the applicant's social security number, the federal sanction on the State is to discontinue aid (JA 223). Likewise, State law requires social security numbers for its programs (JA 223). It is quite common for a recipient to switch from a federal to a state category, since it is common for one's eligibility to change (JA 224).

Mr. Kaufman testified that the requirement of a recipient's social security number is vital to the operation of the system, in that it has successfully prevented fraud and waste and is the most efficient identifier in the State's extremely large and complex system. The system has had enormous problems with fraud in the past few years, as demonstrated by an approximate 10 percent ineligibility rate and a 20 percent error rate.* These errors represent sizable investment of public funds (JA 231). Assistant Commissioner Kaufman further stated that because of the number of people, the Department cannot possibly keep track of recipients by

* In other words, ten percent of the people receiving aid do not qualify and as much as twenty percent either receive too much aid or incorrect amounts.

relying on the case workers (JA 232).

Applicants sometimes claim more children than they actually have. They often fraudulently collect aid from two counties, as has happened frequently in Nassau and Suffolk. An additional problem with fraud is where people are collecting unemployment and welfare at the same time or are seeking public assistance, while suppressing the fact that they are employed, and are receiving income. Another common example of fraud is where the father fails to support the family, which occurred when Mr. Stevens left the home, obtained a job and was earning income, but was not supporting his family. The Stevens' family therefore received public assistance in the form of Aid to Dependent Children based on this desertion by Mr. Stevens. Had Mr. Stevens been located, he could have been required to supply the necessary support to his family (JA 226). If a social security number were used, this might have been prevented since social security numbers are the largest single identifier which can be used from jurisdiction to jurisdiction and from state to state. Social security numbers have been used to match the public assistance rolls with the federal, state and city employment rolls of those receiving unemployment insurance. Had this matching been done

in Mr. Stevens' case, he could have been located and the appropriate support could have been secured (JA 226-227).

Commissioner Kaufman further explained that recently in Suffolk County, the public assistance rolls were matched against state payrolls and from the last match alone, 388 individuals were reported as receiving public assistance and working (JA 226). He testified that social security numbers were not only used for fraudulent purposes but to keep track of the number of people receiving public assistance, since it was an impossibility to rely on names and addresses. Explaining the failure when merely relying on a name and address, he related an instance where it became necessary to determine how much a certain individual was receiving in assistance. His name and address appeared in the newspaper because of an alleged attempt to recoup payments from him, and was therefore fed into a computer. The computer gave back eighty-seven persons with the same name, none of whom had the address listed in the newspaper. This individual's social security number was then obtained and the individual was located within minutes (JA 225-226). When asked if the matching and identification via the computer was tried with names and addresses, Assistant Commissioner Kaufman had indicated that it had been and it was a dismal

failure (JA 229). He explained the problems as being a duplication of people's names, coupled by a frequent change of address and problems with the computer itself. For example, if one fed in an address as Fifth Av. instead of Fifth Avenue, one would not get an accurate account. Indeed, a number of other systems have been tried in the computer and have proved inaccurate or cumbersome as well (JA 229).

POINT I

THE REQUIREMENT OF OBTAINING
SOCIAL SECURITY NUMBERS IS
JUSTIFIED BY A COMPELLING
STATE INTEREST IN THE PREVENTION
AND DETECTION OF FRAUD AND THE
EFFICIENT ADMINISTRATION OF THE
SOCIAL SECURITY SYSTEM.

A. The State Has A Compelling Interest.

Assuming the notion of appellees is more than an "academic exercise" (United States v. Scrap, 412 U.S. 669, 688) and a "vague fear" (Laird v. Tatum, 408 U.S. L, 13-14), there is no substantial merit in an assault on the social security account number requirement. Such a claim is as irrational as a challenge to the detailed information on a birth certificate or even a death certificate. As will be shown in Point II below, the allegations raised by appellees are personal or political, rather than religious in their nature. However, even assuming arguendo that there were any effect on appellees' exercise of religion, the State requirement would clearly be valid.

The courts have long recognized that the First Amendment freedom of religion is not absolute and must be weighed against governmental aims. Reynolds v. United States, 98 U.S. 145 (1878); Braunfield v. Brown, 366 U.S.

599 (1960). The Supreme Court has distinguished regulations which attempt directly to limit or control a religion and regulations which are neutral in that they are for a governmental purpose but have the incidental effect of interfering with a person's religious beliefs.

In Braunfield v. Brown, supra at 605, the Court in noting the above distinction stated that:

"To strike down, without the most critical scrutiny legislation which imposes only an indirect burden on the exercise of religion, i.e. legislation which does not make unlawful the religious practice itself would radically restrict the operating latitude of the legislature."

As enunciated by the Supreme Court in Sherbert v. Verner, 374 U.S. 398, 403 (1962) in quoting NAACP v. Button, 371 U.S. 415, 438 (1963) "any incidental burden on the free exercise of religion may be justified by a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate. . .'" See Bursey v. U.S., 466 F. 2d 1059 (9th Cir., 1972). It is clear that the federal and state regulations involved in the instant case are not designed to discriminate or impede the observance of any religion but are vital to

the order and operation of a valid and important governmental service that is, public assistance.

Clearly the interest of the Government in the proper administration of the AFDC program is at least as compelling as other interests that courts have held sufficient to justify other burdens on the exercise of religion. In Gray v. Gulf, Mobile and Ohio Railroad Company, 429 F. 2d 1064 (5th Cir., 1970), for example the court held that although the plaintiff, a Seventh Day Adventist machinist held religious beliefs that prevented him from joining a union, the state interest in supporting collective bargaining justified the union shop requirements that all employees pay union dues even though this forced Gray to give up his job rather than violate his religious beliefs. See also Yott v. North American Rockwell Corp., 501 F. 2d 308 (9th Cir., 1974); Cap Santa Vice Inc. v. NLRB, 424 F. 2d 883 (D.C. Cir., 1970).

Moreover, laws forbidding plural marriages, Davis v. Beason, 133 U.S. 333 (1890); prohibiting child labor, Prince v. Commonwealth of Massachusetts, 321 U.S. 158 (1943); making certain vaccinations compulsory, Jacobson v. Massachusetts, 197 U.S. 11 (1905) and prohibiting the use of marijuana in violation of the law,

Leary v. United States, 383 F. 2d 851 (5th Cir., 1967), have been upheld despite alleged infringement by those laws on the religious practices of certain groups.

Similarly the State's right to control and regulate the administration of its public assistance program has been upheld despite constitutional claims such as the right to privacy. In Wyman v. James, 400 U.S. 309 (1971), a mother who was receiving Aid to Dependent Children on behalf of her minor child was ruled ineligible after refusing to permit the case worker to make periodic home visits. At the hearing, plaintiff explained that she would permit visits with the case worker elsewhere, but claimed that a visit to the home was in essence a search and violated her Fourth Amendment right. The United States Supreme Court rejected this claim, holding that even if the visit was a search, it was not unreasonable due to the fact it served a valid and proper administrative purpose for the dispensation of the AFDC program.

The testimony at trial clearly demonstrates the necessity of social security numbers. The Assistant Commissioner in charge of Field Operations, William Kaufman, testified that the State's public assistance program has tripled in the past decade; that the number

of persons receiving assistance is approximately 1,400,000 (JA 218) representing enormous amounts of public funds; and that the mere size of this system has rendered it impossible to keep track of and deal with recipients by relying on case workers (JA 232). As the lower court agreed (JA 240), too many people have the same name, which necessitates the use of numbers as a supervisory measure.

Compounding this is a risk of fraud, reflected by the 10 percent ineligibility rate and twenty percent of error rate (JA 231). In this very case, appellees were found by the Suffolk County Department of Social Services to have knowingly and wilfully failed and refused to report their income on their application for benefits, (Defendants' Exhibits G and H 91-92); David Stevens represented to the Department of Social Services in his monthly reports for October, November and December (filed in order to receive unemployment insurance benefits) that he was unemployed when in fact he was employed (JA 187-188). When questioned at trial as to whether he reported the income from his three month employment to the Department of Social Services, he firmly asserted that he had when in fact he had not (JA 188). During a period of time when Mrs. Stevens applied and received home relief on her representation that she had no avail-

able source of income, Mr. Stevens was gainfully employed at Pilgrim State Hospital as a groundskeeper (JA 90, 193). Faced with such problems, state and local welfare agencies must rely on the most common and most efficient identifier available, social security numbers. The use of these numbers is required by the Federal Social Security Act and the state is sanctioned for failure to comply.

When Suffolk County matched the State payrolls with the Suffolk County public assistance rolls by means of social security numbers, as many as 388 employees were found to be receiving public assistance (JA 226). Thus, social security numbers are the best system for identifying welfare clients. Although the District Court recognized that the purpose of the Aid to Dependent Children program is solely to encourage the care of dependent children and that the State has a right to assure that this goal is being accomplished, it nonetheless erred in denying to the defendants herein one of the principal means of insuring that public funds are not squandered or fraudulently obtained. As appellees' testimony clearly demonstrates, their objection is to the very effectiveness and universality of any numerical system, not just social security numbers (JA 107).

B. The Burden The Instant Regulation Places On The Free Exercise Of Religion Is Merely Incidental And There Is No Means Of Administering The AFDC Program Which Would Be Less Burdensome On Plaintiffs-Appellees' Religious Beliefs.

It is impossible to grant an exception to some recipients with regard to enumeration, because such exceptions would necessarily undermine the system. Unlike such cases as Kahane v. Carlson, 527 F. 2d 492 (2d Cir., 1975), no narrower restriction can be formulated. See also Cantwell v. Conn., 310 U.S. 296 (1940); Kennedy v. Meacham, 540 F. 2d 1061 (10th Cir., 1976); Teterud v. Burns, 522 F. 2d 357 (8th Cir., 1975).

As the Supreme Court stated in Sherbert v. Verner, supra, the government will not be required to make exceptions due to burdens on free exercise where to do so would "present an administrative problem of such magnitude . . . that such a requirement would have rendered the entire statutory scheme unworkable." 374 U.S. at 408-409. It is apparent from the record cited previously that no alternative means are available to defendants.

Moreover, appellant's position is based purely on secular reasoning and is even-handed in operation and neutral in its administration toward all religions,

Gillete v. United States, 401 U.S. 437 (1971). The alleged infringement is no greater than is essential for its administration. Appellees are still able to practice their religion, merely a minor aspect of it is claimed to be involved. See Bursey v. U.S., 466 F. 2d 1059 (9th Cir., 1972) at 1083. The State's objective of proper disbursement of aid, is reasonably related to the restraint it places on the minor aspect of appellees' religion. LaReau v. MacDougall, 473 F. 2d 974 (2d Cir., 1972).*

* No coercion on the part of the State is involved. In the case of United States v. Top Sky, 547 F. 2d 481 (9th Cir., 1976) at 485, the court citing Abington School District v. Schempp, 374 U.S. 203 (1963) stated "It is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion." Mr. and Mrs. Stevens were not coerced into seeking aid. An expectation interest in public benefits does not confer a contractual right to receive the expected amounts. See Richardson v. Belcher, 404 U.S. 78 at 80-81 (1971). The Stevens' requested aid and should abide by the regulations and requirements for obtaining it.

POINT II

THE APPELLEES' BELIEF IS NOT
BASED IN RELIGION BUT RATHER
IS BASED MERELY UPON POLITICAL
AND ECONOMIC PREFERENCES.

The law is well-settled that not every assertion of a belief is entitled to First Amendment protection; rather only those beliefs which are found by the court to be, first, sincere beliefs, founded upon deep conviction; and second, beliefs religious in nature and not merely based upon personal or political preferences, will be afforded the protection of the Constitution. Wisconsin v. Yoder, 406 U.S. 205 (1972). United States v. Seeger, 380 U.S. 163 (1965); Theriault v. Carlson, 495 F. 2d 390 (5th Cir., 1974, reh. den. 498 F. 2d 1042, cert. den. 419 U.S. 1003 (1974); United States v. Kuch, 288 F. Supp. 439 (D.D.C., 1968). Moreover in the Kuch case the Court held at 443-444:

". . . Those who seek the constitutional protections for their participation in an establishment of religion and freedom to practice its beliefs must not be permitted the special freedoms this sanctuary may provide merely by adopting religious nomenclature and cynically using it as a shield to protect them when participating in antisocial conduct that

otherwise stands condemned. In a complex society where the requirements of public safety, health and order must be recognized, those who seek immunity from these requirements on religious grounds must at the very least demonstrate adherence to ethical standards and a spiritual discipline."

The evidence adduced in the District Court clearly shows that the Stevens' aversion to social security numbers even though it may be linked to an "Anti-Christ Beast," is in essence a political philosophical belief and is not religious. They attribute the "evil" of the social security number to its power. They claim the pamphlet issued by the Gospel Tract Society Inc., and entitled "Speak Up Now Against New Controls Over Your Money and Your Life" (Plaintiffs' Exhibit III, JA 251), accurately expresses their fears and describes their thoughts and beliefs (JA 182). However, the most cursory review of this document reveals that it contains nothing more than political bantering and is as far from a religious treatise as any document can be. Accordingly, it is submitted that plaintiffs-appellees have failed to sustain their burden to show that their beliefs are religious in nature rather than personal and political and therefore do not fall within the ambit of the Free Exercise

Clause of the First Amendment.

Plaintiff Stevens' alleged belief that they cannot assign their children social security numbers is not entitled to the protection of the First Amendment. In the case of United States v. Seeger, 380 U.S. 163 (1964), concerning conscientious objectors, the Court stated, "while the 'truth' of a belief is not open to question there remains the significant question whether it is 'truly held'. This is the threshold question of sincerity which must be resolved in every case." In addition Theriault v. Carlson, 495 F. 2d 390 (5th Cir., 1974) at 394 following stated, that the task of this Court "is to decide whether the beliefs professed by plaintiffs are sincerely held and whether they are in (their) own scheme of things religious." Cf. Lipp v. Procunier, 395 F. Supp. 871 (1975).

When Mrs. Stevens was asked whether she felt that the possession of social security numbers would cause God to do harm to her and her family, her answer was no more definitive than "possibly" (JA 94-95). Furthermore, neither Mr. nor Mrs. Stevens' fear flows toward other numbers such as, licenses, addresses, telephone numbers, zip codes (JA 102, 196). Indeed,

plaintiff David Stevens admitted that despite the fact the case numbers assigned to him and his family possess all the attributes which he asserts make social security numbers objectionable to him, he did not object when a case number was assigned to them (JA 206-208).

Nor does appellees' professed belief that the social security number is "evil" extend toward the monetary benefits (i.e. AFDC) that this "evil" may produce. Cf. Witmer v. United States, 348 U.S. 375 (1954).

Furthermore, it is significant that the belief in the "evilness" of the social security number is not rooted in the Stevens' religion. Sherbert v. Verner, 374 U.S. 398 (1963), relied heavily upon by plaintiffs, stated that "when an individual is forced by threat of state imposed sanctions to perform acts "undeniably" at odds with fundamental tenets of [his] religious beliefs "the free exercise of religion is seriously at issue." However, the uncontroverted evidence of record is that plaintiffs' belief toward social security numbers are shared neither by the church to which they allegedly belong, nor by any other organized religion or group which the Stevens' have an affinity. Both Pastor Hickman, who also is the religious instructor, and

plaintiffs' expert witness, Dr. Elliott, state that the aversion for social security numbers is not a theological tenet of the religion, that other members of the church have social security numbers (JA136) and finally that there is no allusion in the scriptures from which Mr. and Mrs. Stevens' beliefs allegedly derive, mandating against the acquiring of social security numbers (JA 84-123). Therefore, it would appear plaintiffs are not entitled to the protection of the First Amendment as the court stated in the controlling case of Wisconsin v. Yoder, 406 U.S. 205 at 215-216 (1976):

"[T]o have the protection of the Religion Clauses, the claims must be rooted in religious belief. Although a determination of what is a 'religious' belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests."

The court in that case found that because the plaintiff, a member of the Amish faith, demonstrated that his belief was clearly interrelated to his mode of life and was founded upon a serious and sincere conviction shared by an organized religious group, that belief was

entitled to First Amendment protection. See also People v. Woody, 394 P. 2d 813 (1964) (court in reaching its decision relied in part upon evidence of a long history and large membership); LaReau v. MacDougall, 473 F. 2d 974 (2d Cir., 1972) (must be an integral part of religion).

Consequently, it is submitted that in view of the fact that appellee David Stevens had indisputably made false representations in prior applications for public benefits; that Mr. and Mrs. Stevens themselves voiced doubts and inconsistency in their asserted belief of the "evilness" attached to social security numbers; and that their belief is not shared by any others in their religion, the court was clearly erroneous in ruling that the First Amendment bars the State requirement at issue.

CONCLUSION

THE JUDGMENT BELOW SHOULD BE
REVERSED AND THE PETITION
SHOULD BE DISMISSED.

Dated: New York, New York
November , 1977

Respectfully submitted,

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STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

GALE D. BERG , being duly sworn, deposes and
says that She is employed in the office of the Attorney
General of the State of New York, attorney for Appellant
herein. On the 21st day of November , 1977 , s he served
~~One~~ ^{Two} Appendix and Two Briefs
the annexed upon the following named person :

Mr. C. McEvily
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Attorney in the within entitled Appeal by depositing
a true and correct copy thereof, properly enclosed in a post-
paid wrapper, in a post-office box regularly maintained by the
Government of the United States at Two World Trade Center,
New York, New York 10047, directed to said Attorney at the
address within the State designated by him for that
purpose.

Sworn to before me this
21 day of November , 1977

Emanuel M. Kay
Assistant Attorney General
of the State of New York

Gale D. Berg